In the High Court of Punjab and Haryana, at Chandigarh.

R.S.A. No. 3876 of 2003

Date of Decision: 29.10.2007

Harnek Singh

…Appellant

Versus

Raj Kumar

…Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.P.K.Gupta, Advocate
for the appellant.

Mr.Sherry K. Singla, Advocate
for the respondent.

RAJESH BINDAL, J.

The defendant is in second appeal before this Court against the concurrent findings of fact recorded by both the Courts below, whereby the suit filed by the respondent/plaintiff for possession by way of specific performance was decreed.

The brief facts of the case are that the appellant/defendant, being owner in possession of land measuring 4 bighas 16 biswas being 1/8th share of land measuring 38 bighas 13 biswas, sold the same vide agreement to sell dated November 9, 1994 to the respondent/plaintiff for a total consideration of Rs. 1,95,000/-. A sum of Rs. 1,73,000/- was received by him as earnest money in the presence of the witnesses. The sale deed was to be executed on or before May 9, 1996 on receipt of balance consideration. On failure of the appellant/defendant to execute the sale deed on or before the appointed date, suit was filed on August 1, 1996 seeking possession by way of specific

performance. The appellant/defendant contested the suit by raising the plea that the agreement in question is a false and fabricated document. In fact, the appellant was selling his agricultural produce through the respondent/plaintiff and in routine, the appellant used to take loan from the respondent/plaintiff and sign blank stamp papers as a token of security. Both the Courts below found that the story put forward by the appellant/defendant was false as the same was not supported by any material produced on record by him. On the other hand, the respondent/plaintiff had been able to prove the genuineness of the document by producing the petition writer and the attesting witness. The testimony of these witnesses proved that the agreement was signed in their presence, due entries of which were made in the scribe register and payment of Rs.1,73,000/- was made to the appellant/defendant in their presence. Even the signatures of the appellant/defendant was also found to be matching with his signatures on the vakalatnama filed in the Court in the present case. This was also opined by the Document & Finger Print Expert. An entry in the books of accounts showing payment of Rs.1,73,000/- to the appellant/defendant also corroborated the fact that the payment was made and the same was entered in the books of accounts by the respondent/plaintiff, maintained in due course of business.

The plea set up by the appellant was found to be false to the effect that the agreement to sell was a forged document and in fact the appellant/defendant had already cleared the account of the respondent/plaintiff before stopping sale of his agricultural produce at his shop and 'no dues' certificate was also issued to him. However, 'no dues' certificate so produced by the appellant was found to be a forged document by both the Courts below.

As far as willingness of the respondent/plaintiff to get the sale deed executed is concerned, both the Courts below concurrently found that in the present case the substantial amount of the sale consideration having been paid by the respondent/plaintiff to the appellant, there is no question of his being not willing to get the sale deed executed merely on payment of Rs. 22,000/- as the balance consideration when a sum of Rs. 1,73,000/- had already been paid as earnest money. Even otherwise, he had got his presence marked on the appointed date also.

Learned counsel for the appellant had not been able to point out any material on record, which could enable this Court to take a view that the findings of Courts below are perverse either on account of misreading of any

evidence or on account of non-consideration of any material evidence. Rather a correct view has been taken on appreciation of the material on record where the case set up by the appellant/defendant was found to be totally false.

A plea regarding grant of alternative relief to the respondent/plaintiff is sought to the raised. However, in my opinion, the same also can not be pressed for the simple reason that in the present case, out of total consideration of Rs.1,95,000/-, Rs.1,73,000/- had already been paid as earnest money and secondly no such plea was ever raised by the appellant/defendant before the Courts below. Still further, there is no delay in the filing of the suit after the appointed date for execution of sale deed as the suit was filed on August 1, 1996, whereas the sale deed was to be executed on or before May 9, 1996.

Accordingly, I do not find any substantial question of law arises in the present appeal and the same is dismissed.

(Rajesh Bindal)
Judge

DATED: 29.10.2007
"DK"